IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 1 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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COMMISSIONER OF INCOME-TAX

Versus

K S LOKHANDWALA FAMILY TRUST

Appearance:

1. INCOME TAX REFERENCE No. 1 of 1992
MR MANISH R BHATT for Petitioner No. 1
MR KC PATEL for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE K.A.PUJ

Date of decision: 17/07/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE K.A.PUJ)

At the instance of the revenue, the following question of law is referred to this Court for its

opinion:_

"Whether, the Appellate Tribunal is right in law in confirming the view taken by the CIT(A) that the assessment framed on the assessee should be on substantive basis instead of protective basis?"

2. The assessment year involved is assessment year 1981-82. While drawing the statement of case, the Tribunal has referred to and relied on its earlier decision in ITA No.629/Ahd/1986 dated 7-7-1988 in the case of ITO vs. K.S. Lokhandwala Family Trust and ITA No.852/Ahd/1984 dated 1-12-1984 in the case of ITO vs. Shri Mohmed Hussain Kamalbhai.

3. This Court had an occasion to deal with the matter of one Faridahmed Abdulsamad wherein the similar question was involved. In that matter the question was as to in whose names the income was to be assessed whether in the hands of the assessee or in the hands of KS Lokhandwala Family Trust. This Court has observed that it is not possible to know whether the amount of income, which the revenue desires to assessee in the hands of the assessee, was in fact included in the income of KS Lokhandwala Trust. If by a final order of the Tribunal or in pursuance of a reference filed in this Court, the amount in question was treated as income of the Trust, it would be improper to tax the assessee again in respect of the said income. In the absence of any specific information, it would not be possible for this Court to render any opinion on the questions referred to this Court and, therefore, this Court has declined to answer the questions and directed the Tribunal to look into the record of the case of KS Lokhandwala Family Trust and pass necessary order after considering the final order passed in the case of KS Lokhandwala Family Trust by the Tribunal.

4. In the present reference, the issue is as to whether the assessment framed in the case of the assessee should be on substantive basis or on protective basis. The Tribunal has taken the view that the assessment should be on substantive basis and not on protective basis.

However, this Court has remanded the matter of Faridahmed Adbul Samad as stated above. In this view of the matter, it is not possible at this stage to give finding as to whether the income which is to be assessed in the hands of the assessee is to be assessed on

substantive basis or protective basis. Since the earlier matter is remanded to the Tribunal and this Court has declined to give any answer, we take the same view in this matter and decline to give any answer to the question referred and direct the Tribunal to decide the issue involved in the present reference alongwith that of FaridAhmed AbdulSamad in ITR No.202 of 1986 decided on 13-8-2001 after considering the observations made by this Court in the aforesaid reference.

5. The present Reference is accordingly disposed of with no order as to costs.

(M.S. Shah,J) (K.A. Puj,J)

zgs/-